

April 11, 2008

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Cathy L. Schaufelberger

Date of Filing: March 15, 2008

Case Number: TFA-0248

This Decision concerns an Appeal that Cathy L. Schaufelberger filed in response to a determination that the Department of Energy's (DOE) Bonneville Power Administration (BPA) issued to her on February 25, 2008. In that determination, the BPA denied a request for personnel records that Ms. Schaufelberger submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as the DOE implemented in 10 C.F.R. Part 1004. This Appeal, if granted, would require the BPA to release the documents that it withheld from Ms. Schaufelberger.

The FOIA generally requires the federal agencies to release documents to the public, upon request. However, Congress has provided nine FOIA exemptions that set forth types of information that agencies may withhold. *See* 5 U.S.C. §§ 552(b)(1)-(9); 10 C.F.R. §§ 1004.10(b)(1)-(9).

I. Background

In her FOIA request, Ms. Schaufelberger requested

[I]nformation on individuals in organizations with department codes that begin with PG and for individuals in the organization with the department code of PTK. Information [Ms. Schaufelberger] requested include[s] awards, bonuses, and other monetary payouts such as Retention Allowance, Recruitment/Relocation bonuses, Awards, Tuition Reimbursement, Student Loan Reimbursement, Other Bonuses, Sustained Superior Performance, Quality Step Increases, and Promotions based on Accretion of Duties.

Determination Letter, dated February 25, 2008. The BPA released some responsive information to Ms. Schaufelberger. *Id.*

However, the BPA withheld the names and ages of Quality Step Increase (QSI) and Performance Award recipients. *Id.* The BPA found that BPA employees have a “personal privacy interest . . . [in] information that reveals the details of [their] job performance.” The BPA also found that disclosing who received those awards would “not significantly contribute to the public’s understanding of BPA operations or activities, or shed light on the performance of BPA’s statutory duties.” Lastly, the BPA found that “the individual privacy interest in protecting the names” of those award recipients “outweighs any public interest in disclosure.” *Id.*

Ms. Schaufelberger appealed the BPA’s withholding of the names of QSI and Performance Award recipients to the DOE’s Office of Hearings and Appeals (OHA). She did not appeal the withholding of the individuals’ ages. Appeal Letter, dated March 1, 2008.

II. Analysis

FOIA Exemption 6 protects from disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” 5 U.S.C. § 552(b)(6); 10 C.F.R. § 1004.10(b)(6). The purpose of Exemption 6 is to “protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” *Dep’t of State v. The Washington Post Co.*, 456 U.S. 595, 599 (1982).

Ms. Schaufelberger presents several arguments in her Appeal. First, she questions how knowing who received a QSI or Performance Award is an invasion of personal privacy, but releasing salaries is not. Second, she notes that the BPA is celebrating the “Administrators Excellence Awards.” She asks why identifying Administrators Excellence Award recipients is not an invasion of privacy, but releasing QSI or Performance Award recipients is. Third, she states that a federal judge published her name as part of a transcribed telephone conversation at the BPA. Again, she juxtaposes the release of her name with releasing QSI or Performance Award recipients, the latter of which she suggests is far less of an invasion of personal privacy. Lastly, Ms. Schaufelberger states that the BPA should release the names of the QSI and Performance Award recipients because “there is a great public interest on how awards are given and how fair the distribution of awards are.” In this regard, she questions whether “the majority of awards go to one race, one sex, or one age bracket.” Appeal Letter, dated March 1, 2008.

We must apply a three-step analysis to determine whether the BPA properly withheld the QSI and Performance Award recipients from Ms. Schaufelberger pursuant to Exemption 6. First, we must determine whether disclosing the information compromises a significant privacy interest. If we do not identify a privacy interest, the BPA may not withhold the records. *Ripskis v. Dep’t of Housing & Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984) (*Ripskis*). Second, we must determine whether releasing the information would further the public interest by shedding light on government operations and activities. See *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S.

749, 773 (1989). Third, we must balance the privacy interest against the public interest in order to determine whether releasing the information would constitute a clearly unwarranted invasion of personal privacy. *See generally Ripskis*, 746 F.2d at 3.

Regarding the first step, we have found that government employees have a privacy interest in maintaining the confidentiality of their performance awards because disclosure of performance awards “would allow direct comparison between employee awards and almost certainly incite jealousy in those employees receiving lower awards.” *John Kasproicz*, 28 DOE ¶ 80,161 (Apr. 12, 2001) (Case No. VFA-0660) (citing *Ripskis*, 746 F.2d at 3). Therefore, the BPA employees have a privacy interest in maintaining the confidentiality of their Performance Awards and QSI’s, which are a type of performance award.

Regarding the second step, we have previously disagreed with an office’s determination that there is no public interest in the withheld names of performance award recipients. *See John Kasproicz* (“[F]ederal employees are public servants, and . . . the public has a significant interest in knowing how its employees are paid.”) (citation omitted).

However, regarding the third step, we have previously found that an employee’s privacy interest in withholding the fact that he or she received a performance award overrides the public interest in disclosure. *See Terry M. Apodaca*, 29 DOE ¶ 80,304 (July 25, 2007) (Case No. TFA-0204); *Robert J. Ylimaki*, 28 DOE ¶ 80,154 (Mar. 23, 2001) (Case No. VFA-0651). In *Terry M. Apodaca*, we found that the embarrassment and jealousy caused by disclosing an award recipient’s name and the amount of the award may have a “deleterious effect[] . . . on employee morale and workplace efficiency.” Similarly, in *Robert J. Ylimaki*, we found that disclosing an award recipient’s name and the amount of the award would give rise to the “substantial possibility” that the recipient would suffer harassment from other employees. Although Ms. Schaufelberger requested only the recipients’ names,* we find that disclosing that information would still give rise to a “substantial possibility” that the recipients would suffer harassment from other employees. Therefore, we find that the BPA properly withheld the QSI and Performance Award recipients from Ms. Schaufelberger.

In her Appeal, Ms. Schaufelberger raises additional arguments comparing the release of salaries, Administrators Excellence Award recipients and her own name through a federal lawsuit with releasing the recipients of a QSI or Performance Award. There is no evidence that those documents were released under the FOIA, having been subjected to the application of the standards discussed above. Moreover, even if they were released under the FOIA, because they are not relevant to the determination at issue in this case, they have no bearing on this Decision. *See* 10 C.F.R. § 1004.8(a) (stating that a FOIA

* Ms. Schaufelberger states, “[T]here is a great public interest on how awards are given and how fair the distribution of awards are. Do the majority of awards go to one race, one sex, or one age bracket?” Appeal Letter, dated March 1, 2008. We agree that Ms. Schaufelberger raises legitimate issues of public interest, but note that she may address the public interest and avoid privacy issues by requesting the above information without the recipients’ names.

requester may “appeal *the determination* to [OHA]”) (emphasis added). Exemption 6 analysis is fact-specific; in evaluating whether an office properly invoked Exemption 6, we must independently apply the federal and OHA case law to the facts of each case. Therefore, we applied the appropriate three-step Exemption 6 analysis of the relevant documents to reach our result.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Cathy L. Schaufelberger, OHA Case No. TFA-0248, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: April 11, 2008